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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/294,563	04/20/99	SCHMIDT	K 08640/018001

ma

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TM02/1109

EXAMINER

NGUYEN, D

ART UNIT

PAPER NUMBER

2643

DATE MAILED

11/09/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/294,563

Applicant(s)

SCHMIDT ET AL.

Examiner

Duc M Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11 and 34-52 is/are allowed.
- 6) ☒ Claim(s) 12, 17-19, 21, 24, 26, 29 and 53-57 is/are rejected.
- 7) ☒ Claim(s) 13-16, 20, 22, 23, 25, 27, 28 and 30-33 is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) ____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 and 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 12 recites the limitation "the proxy line" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim.
3. Claim 18 recites the limitation "the modem model" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 24, 26, 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Taarud (5,528,679).

Consider claims 24, 26, 29. Taarud teaches the limitations of claims 24, 26 and 29 in the abstract; col. 4, ln 29 to col. 6, ln 19.

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6. Claims 53-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Borchert et al (5,461,318).

Consider claims 53-57. Borchert teaches the limitations of claims 53-57 in the abstract; figures 1-7; col. 3, ln 20-60; col. 10, ln 48 to col. 12, ln 30.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taarud (5,528,679) in view of Burgess (6,111,861).

Consider claim 19. Taarud teaches a method of marketing telephone lines comprising speed pre-qualifying customer lines using one-ended electrical measurements performed from a central location (col. 4, ln. 29 to col. 6, ln. 19; see fig. 2a-b). Taarud does not teach selecting billing rates at prices that depend on the speed qualification of the portion.

Burgess teaches determining whether the line at issue is billed as a high speed analog data line or an analog voice (or low speed analog data) line (col. 10, ln. 21-63).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Burgess into the teachings of Taarud, so that appropriate charging rate can be accurately applied to the communication connection.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taarud (5,528,679) in view of Burgess (6,111,861) as applied to claim 19 above, and further in view of Hillson et al (6,118,860).

Consider claim 21. Taarud in view of Burgess does not teach the limitations of claim 21.

Hillson teaches the use of a data rate measurement and a comparator for applying appropriate billing rate (e.g., to disable or pause the usage timer when data is received at a rate less than the predefined threshold data rate value and re-enable or maintain the operation of the usage timer when data arrives at or above the predefined data rate.) In other words, billing rate is set to 0.00 when data is received at a rate less than the predefined threshold data rate value and billing rate is set to a certain rate when data arrives at or above the predefined data rate.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Hillson into the teachings of Taarud in view of Burgess, so that appropriate charging rate can be accurately applied to the communication connection.

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Allowable Subject Matter

10. Claims 1-11, 34-52 are allowed.

11. Claims 13-16, 20, 22-23, 25, 27-28, 30-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 12, 17-18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Nguyen whose telephone number is (703) 308-7527.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Kuntz, can be reached on (703) 305-4708.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-6306 or (703) 308-6296

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

November 1, 2000



Duc Nguyen
Primary Examiner

IMPORTANT NOTICE

Effective October 1, 2000, the Examiner handling this application will be assigned to a new Art Unit. For any written or facsimile communication submitted ON OR AFTER October 1, 2000, this Examiner, who was assigned to Art Unit 2743, will be assigned to Art Unit 2643. Please include the new Art Unit in the caption or heading of any communication submitted after the October 1, 2000 date. Your cooperation in this matter will assist in the timely processing of the submission and is appreciated by the Office.